IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 11.02.2002
Coram :
THE HONOURABLE MR. JUSTICE P. SHANMUGAM
and
THE HONOURABLE MR. JUSTICE P. THANGAVEL
H.C.P. No.1029 of 2001 and H.C.M.P. No.104 of 2001

P. Sudhakar .. Petitioner

vs.

1. State of Tamil Nadu, rep. by
the Secretary to Government,
Public (L&O) Department,
Fort St. George,
Chennai-9.

2. Union of India, rep. by the
Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

3. The Superintendent,
Central Prison,
Chennai. .. Respondents

PRAYER : Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to issue a Writ of Habeas Corpus calling for the records leading to the detention of Lebaku Kanakaiah under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974) vide detention order dated 12.6.2001 on the file of the first respondent herein made in Proceeding No.SR.I/590-5/2001 and quash the same as illegal and consequently direct the respondents herein to set the said detenu at liberty from the Central Prison, Chennai.

: ORDER
This Habeas Corpus Petition coming on for orders, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. B. Kumar, Senior Counsel for M/s. R. Loganathan on behalf of the petitioner and of Mr. I. Subramanian, Public Prosecutor appearing on behalf of respondents 1 and 3 as well as of Mr. Su. Srinivasan, Additional Central Government Standing Counsel for the second respondent/Central Government, passed the following

order :

P. SHANMUGAM, J. The above writ petition is filed for the issue of a Writ of Habeas Corpus by calling for the records of the first respondent connected with the Order No.SR.I/590-5/2001 dated 12.6.2001 and set at liberty the detenu Lebaku Kanakaiah, son of Lebaku Subbaiah, now detained in Central Prison, Chennai under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974).

2. According to the petitioner, Lebaku Kanakaiah (hereinafter referred to as the detenu) had gone to Kuwait 14 years back and was employed originally as an Attender in a Government Organisation there; presently, he is working as a domestic servant. He does not know to read or write in any language and he can only understand Telugu. He had not come to India even once in the last three years. He came to India on 21.4.2001 to attend the marriage of one of his close relatives in Andhra Pradesh from Kuwait via Muscat by Flight No.WY-850/21.4.2001. In the same flight, Thiru Pothi Narayana and Tmt. Pothi Rajamma Narayana arrived as passengers and they were intercepted at the exit gate of the Customs Arrival Hall. On personal search, the brown chappals worn by Thiru Pothi Narayana and the black chappals worn by Tmt. Pothi Rajamma Narayana were found unusally heavy and after questioning of concealment of any contraband, on their negative reply, the chappals were cut open and it was found that 12 nos. of gold bars of ten tolas each with foreign markings wrapped with carbon papers were recovered from the chappals worn by Thiru Pothi Narayana and 8 nos. of gold bars of ten tolas each with foreign markings wrapped with carbon papers were recovered from the chappals worn by Tmt. Path Rajamma Narayana. On further questioning, they replied that the said chappals containing the gold bars were given to them by the detenu who arrived by the same flight and identified him near the green channel. The contraband items were seized under mahazar for further action under the Customs Act, 1962 readwith the Foreign Trade (Development and Regulation) Act, 1992. On the basis of statements from those persons as well as the statement of the detenu, the detenu was arrested and remanded to custody on 21.4.2001 and further detained by the order impugned herein. The representation made on behalf of the detenu dated 23.6 .2001 was disposed of by the Government on 17.7.2001.

3. The grounds of detention dated 12.6.2001 state that by attempting to import the above said gold bars by way of concealment and nondeclaration with the intention of evading customs duty, the detenu has rendered them liable for confiscation and his further action by not making a true declaration to the customs authorities, he has committed an

offence punishable under Sections 132 and 135 of the Customs Act, 1962 and penal action under Section 112. According to the respondents, even though adjudication proceedings and prosecution proceedings are likely to be initiated, the State Government is satisfied that it is necessary to detain the detenu under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent him from indulging in smuggling goods in future. The detention order dated 12.6.2001 is now under challenge.

4. Mr. V. Kumar, learned senior counsel arguing on behalf of the detenu made the following submissions as to how the order of detention is not sustainable in law :

(a) The documents and the grounds were not read over and explained to the detenu in the language known to him, i.e. Telugu. (b) The manifest of the passengers' list, which was relied upon, was given only in English and no translation in Telugu is given and after specific request, the translated copy was not explained and read over to him in Telugu. (c) The solitary instance, assuming it to be true, is not enough to sustain the order of detention. (d) The detention at Chennai, far away from the native place of the detenu, is violative of Article 21 of the Constitution of India. (e) Delay in the disposal of the representation.

5. The learned Public Prosecutor refuted all the grounds raised on behalf of the petitioner and submitted that there are no infirmities in the detention and that there is no violation in the subsequent procedure in reference to the detenu. According to him, it is highly unbelievable that a person who is working for 14 years in Kuwait does not know any language except Telugu and that he had been appraised of the order as well as the grounds of detention, including the manifest. He further submits that even a solitary instance can form the basis of detention considering the nature of the activity. In this case, a clear case of concealment, disclosing a planned attempt and action, calling for an order of detention is made out. He also submitted that there is absolutely no delay in considering the represention of the detenu and referred to the various dates set out in the counter in justification of the time taken for disposal of the representation and he thus prayed for dismissal of the writ petition.

6. The detenu claims to be an illiterate and that he can only understand and speak Telugu, which is his mother tongue. There is no contra evidence on this aspect and therefore, we take it that the detenu understands and speaks Telugu. His main ground of challenge is that none of the documents and the grounds of detention were read over and explained to him in Telugu. In support of this submission, he relies on the rubber stamp and the

signature of the Preventive Officer as well as the Data Entry Operator, Customs House in the order of detention. The original copy of the order of detention served on the detenu contains an endorsement to the effect that the detenu had received the copy, it was explained in the language known to him and he understood the matter completely. He has signed as token having received that detention order on 13.6.2001. The Preventive Officer, Customs House has signed under a rubber stamp which says 'Read Over and Explained in Telugu'. On the contrary, the grounds of detention running to nine pages dated 12.6.2001 served on 16.6.2001 also contained the endorsement in rubber stamp. However, these nine pages contain a rubber stamp stating, "Read over and explained in Hindi", signed by T. Venkateswara Rao, Data Entry Operator, Customs House, Chennai with date 16 .6.2001.

7. The requirement to read over and explain in the same language that a detenu understands, if he is an illiterate, is a constitutional requirement. The detention order will become void on the fifth day of detention if the grounds of detention are not communicated to the detenu. The counter affidavit filed by the Deputy Secretary to the Government dated 21.11.2001 in reference to this specific contention says in paragraph 5 as follows :

"As a token of having explained in Telugu, an endorsement 'read over and explained in Telugu' had been made and signed behind each of the aforesaid document by the respective Telugu Intermediator. Thus, the contention that none of the documents were originally explained to the detenu at the time of service of the order of detention and that the documents were read over and explained in Hindi and that the detenu, though an illiterate, has not been read over and explained the grounds in Telugu are false."

Both from the English version of the grounds of detention served on the detenu on 16.6.2001 as well as the English translation of the grounds dated 16.6.2001 filed before this court as well as from the copies of booklet supplied to the detenu, we find that the endorsement was originally read over and explained to the detenu in Hindi and not in Telugu as stated in the counter. The first respondent has not even verified as to the furnishing of the copies of the documents and the endorsement made therein on the backside of those documents, especially the grounds of detention. The argument of the learned Public Prosecutor at this stage that the officer had omitted to strike off the word Hindi and write Telugu cannot be accepted.

8. In RAZIYA VS. UNION OF INDIA (A.I.R. 1980 S.C. 1751), the Supreme Court held that if the grounds are couched in a language which is not known to the detenu, the detaining authority must see to it that the grounds are explained to the detenu, a translation is given to him and the grounds bear some

sort of certificate that the grounds have been explained to the detenu in a language which he understands. A bare denial, at the stage when a Habeas Corpus Petition is filed in the court, by the detainaing authority that these formalities were observed would be of no consequence, particularly when it is not supported by any document or by any affidavit of the person who has done the explaining or the translation. Non-compliance of this constitutional safeguard would by itself be sufficient to vitiate the order of detention, thereby violating Article 22(5) of the Constitution. 9. Petitioner has filed H.C.M.P. No.104 of 2001 raising a supplementary ground. According to him, the subsequent claim that the grounds of detention were read over and explained to the detenu, who is an illiterate, in Telugu language is contrary to the contemporaneous endorsement made. He further raises a point that two of the documents were not in Telugu at the time of service of the order of detention and that they were not read over and explained to the detenu in Telugu. The Additional Superintendent, Central Prison, Chennai did not explain anything to the detenu and in all probabilities, the Additional Superintendent of the Central Prison, who signed the document, may not know Telugu at all. In the counter affidavit filed in reference to these additional grounds, it is stated that at the time of serving of the documents, they had been read over and explained to the detenu in the language known to him. The passenger manifest was clearly read over and explained to the detenu in Telugu by the Telugu Mediator at the time of serving the grounds of detention. The Telugu version of the same was received from the Customs Department and it was served to the detenu on 19.7.2001. However, in reference to the specific point raised by the petitioner that the Additional Superintendent, Central Prison who has signed under the endorsement 'read over and explained in Telugu to the detenu and served on him' does not know Telugu, has not been refuted. 10. We are satisfied that the essential requirement to communicate to the detained person the grounds on which the detention order has been made so as to afford him the earliest opportunity of making a representation has been violated in this case. It has to be held that there is no proper communication of the grounds of detention and that the constitutional safeguard enshrined in Article 22(5) of the Constitution of India has been violated. In the above circumstances, we are not inclined to go into the other grounds raised and argued by the counsel. 11. For the above reasons, the order of detention is liable to be quashed and it is accordingly quashed. The detenu is hereby directed to be released forthwith unless his presence is requirement in any other case. No costs. Consequently, the connected H.C.M.P. is closed.

(P.S.M.J.) (P.T.J.) 11..02..2002. Index : Yes/No ab

Sd/..

Assistant Registrar

// TRUE COPY //

Sub Assistant Registrar (C.S.)

To

1. State of Tamil Nadu, rep. by the Secretary to Government,
Public (L&O) Department, Fort St. George, Chennai-9.

2. Union of India, rep. by the Secretary to Government,
Ministry of Finance, Department of Revenue, New Delhi.

3. The Superintendent, Central Prison, Chennai.

4. The Public Prosecutor, High Court, Chennai.

5. The Joint Secretary to Government, Public (L&O) Department,
Fort St. George, Chennai-9.

P. SHANMUGAM, J.

and

P. THANGAVEL, J.

Pre-delivery

O R D E R

DATED :
11/02/2002

Habaes Corpus Petition
No.1029 of 2001

Allowing the petition for the issue of Writ of Habeas Corpus and setting aside the order of detention and directing the release of the detenu forethwith unless his detention is required in connection with

Delivered on
11-02-2002